IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1066 OF 1994.

Shri Sakharam Baghoji More & ors.: Appellants.

versus

Namdeo Waman Gangurde & ors : Respondents.

Mrs.Nayana Thatte for Mr.S.M.Oak for the appellants.

Mr.Lokesh i/by G.S.Hegade for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 17th January 2005.

ORAL ORDER.

1. Heard advocates for the appellants and respondents. Appellant No.1 was the original claimant. He suffered in an accident between two S.T. buses. He being one of the passengers in one of the S.T. buses. He, therefore, filed petition claiming Rs.2,25,000/-. The Tribunal, Raigad at Alibag awarded him Rs.45,508/-.

Therefore, this appeal.

2. Counsel for the appellant brought to my notice a certificate proved by the Doctor at J.J.Hospital, Bombay that due to the injuries, the appellant suffered permanent incapacity to the extent of 20% or 25%. That certificate is on record. And therefore she contended that awarding compensation of Rs.45,508/- is not at all justified.

3. It is true that such a certificate is proved by the claimant by examining the concerned Doctor. However, the certificate is silent as to the exact nature of incapacity. Stating that permanent incapacity is estimated to 25% was not at all sufficient. Attempt should have been made to bring on record the nature of incapacity; whether it is physical incapacity, mental, intellectual or incapacity of understanding; which functioning of the body is affected by that incapacity and; whether the incapacity is affected earning capacity and to what extent. When these questions were posed, the counsel for the appellant prayed that looking to the seriousness of accident, the matter be remanded.

4. Counsel for the respondents opposed this prayer for remand, but not so vehemently and seriously. However, remand would be in the interest of both the parties. Therefore, the impugned order is maintained. However, the matter is remanded to the trial Court to find out exact nature of injuries; nature of permanent incapacity after recording evidence and then to consider, whether to enhance the compensation or not. So all the issues regarding enhancement and certificate issued by the Doctor at JJ Hospital Bombay (who is P.W.2) are kept open. It is clarified that the matter is remanded for considering the prayer for enhancement only. Parties to appear before the trial Court on 14th February 2005 and the Court to decide the matter before 30th April 2005. Both the parties agree not to take unnecessary adjournments.

[D.G.DESHPANDE]

17/01/2005 JUDGE.